

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DANIEL HILE,

Defendant.

8:10CR449

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's Motion for Award of Good Time Under 28 USC § 2241, ECF No. 148.

The Defendant notes that the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), at Section 102(b), amends 18 U.S.C. § 3624 to provide a more liberal good time calculation for federal inmates. He asks this Court to order the Bureau of Prisons to recalculate his sentence and give him the benefit of the more liberal good time calculation without awaiting the Risk and Needs Assessment of the Attorney General, described in Section 102(a) of the First Step Act.

The Defendant cites to *Matheny v. Morrison*, 307 F.3d 709 (8th Cir. 2002), for the proposition that this Court's jurisdiction is properly invoked under 28 U.S.C. § 2241.

In *Matheny*, the Circuit Court stated: "A petitioner may attack the execution of his sentence through § 2241 in the district court where he is incarcerated; a challenge to the validity of the sentence itself must be brought under § 2255 in the district of the sentencing court." *Id.* at 711 (citing *Bell v. United States*, 48 F.3d 1042, 1043 (8th Cir. 1995)).

Defendant's action is one challenging the *execution* of his sentence and not the *validity* of the sentence itself. The caption on his pleading suggests that he intended to

bring the action in the U.S. District Court for the Western District of Missouri, and the envelope in which his pleading was mailed indicates that he is incarcerated within that district. ECF No. 148, Page ID 508. Yet the pleading was mailed to this district court. *Id.*

The Defendant's Motion was misfiled in this Court, and it will be denied without prejudice.

IT IS ORDERED:

1. The Defendant's Motion for Award of Good Time Under 28 USC § 2241, ECF No. 148, is denied, without prejudice; and
2. The Clerk will mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 21st day of March 2019.

BY THE COURT:

s/Laurie Smith Camp
Senior United States District Judge